

IN THE MATTER OF a Board of Inquiry
appointed pursuant to s. 38(1) of the
Human Rights Code, R.S.O. 1990, c. H.19, as amended,

BETWEEN:

MELVA SNOWLING

Complainant

- and -

THE CORPORATION OF THE CITY OF ST. CATHARINES,

LAWRENCE TUFFORD AND JAMES BRADY

Respondents

Date of Complaint: November 28, 1990

Date of Interim Decision: January 26, 1995

Board of Inquiry: Susan Tacon

Appearances: Jennifer Scott, on behalf of the Commission
Michael Hines, on behalf of the Respondents

INTERIM DECISION

The instant complaint was filed on November 28, 1990. A conference call commencing the hearing was held on July 6, 1994. At that time, N. Koltun appeared on behalf of the complainant Melva Snowling. It appears from the material filed with the Board that Ms. Koltun is no longer acting for the complainant. If this is incorrect or if the complainant is represented by another counsel, other than counsel for the Commission, that will be noted in the final (or other interim) decision(s) in this matter.

This interim decision deals with a dispute between counsel for the Commission and for the respondents regarding the order in which the preliminary motions are to be heard. The dates set for the in-person hearing of the complaint commence January 30, 1995 and continue on: January 31, February 15, 16 and 17, April 12 and 13, May 10, 11 and 12, 1995. Given the date on which the dispute just referred to was communicated to the Board, the parties were directed to file written submissions with the Board, delivered by fax, by January 18, 1995. Written responses by both parties were to be filed, again by fax, by January 23, 1995. This format was chosen to permit the Board to rule on the order in which the preliminary motions are to be heard prior to the first date for the in-person hearing on January 30, 1995. It was anticipated that this procedure would enable a more efficacious use of the hearing day(s).

Written submissions and responses were received from the parties. In my view, it is not necessary to recount those submissions herein. The motions at issue include:

(a) the Commission's motion to remove counsel of record for the respondents on the basis that counsel is allegedly a necessary witness in respect of reprisal allegations;

(b) the respondents' motion to sever the complaint dealing with the alleged discrimination from the portion dealing with the reprisal allegations;

(c) the respondents' motion to dismiss the complaint on the bases that the Commission's handling of the file has been improperly motivated and the delay involved is excessive, unjustified and prejudicial;

(d) the Commission's motion that the dismissal motion be quashed on the basis of abuse of process;

(e) the respondents' motion for disclosure of documents by the Commission dealing with the allegations raised in (c), except those documents covered by solicitor-client privilege;

(f) the Commission's motion seeking further disclosure by the respondents.

Counsel for the Commission submitted that the order of the preliminary motions should be: the motion to remove counsel of record; the motion to dismiss the abuse of process motion; the abuse of process motion; and, if the Commission is unsuccessful on its motions, the preliminary motion regarding disclosure by the Commission on the abuse of process motion and the Commission's motion seeking further disclosure.

Counsel for the respondents asserted that the order of the preliminary motions should be: the motion for disclosure; the motion to dismiss the complaint; the motion to remove counsel. Further, it was indicated that the respondents would not object to hearing the motion to dismiss and the motion to remove counsel at the same time rather than await the Board's ruling on the motion to dismiss.

The above motions and the submissions in support have been considered by me. In the circumstances, my ruling with respect to the order of the preliminary motions is given herein with brief reasons only.

I am persuaded that it is appropriate to first hear together the motions noted in (a) and (b). That is, the Commission's motion to remove counsel of record and the respondents' motion to sever the complaint dealing with the alleged discrimination from the portion dealing with the reprisal allegations will be heard and disposed of before proceeding further. The motions in (a) and (b) are reasonably related and affect, inter alia, who may act as counsel for the respondents with respect to the remaining preliminary motions and the merits of the complaint. I am satisfied that Mr. Hines may act as counsel for the respondents in respect of the submission on the motions in (a) and (b).

Next in order shall be the preliminary motion in (e) wherein counsel for the respondents seeks disclosure of documents by the Commission in respect of the allegations raised in (c), except those covered by solicitor-client privilege. It appears from the submissions that counsel for the respondents requires these documents in support of his preliminary motion seeking dismissal of the complaint, as noted in (c). Thus, in my view, it is appropriate to deal with this matter prior to hearing the dismissal motion. There may need be some reference to the motion in (c) [and (d)] in the submissions regarding the disclosure motion, to set the context in which the disclosure motion is argued. That, in my opinion, is distinct from full submissions on the motions in (c) and (d). I am of the view that it is useful, as well, to hear the preliminary motion in (e) together with the Commission's motion in (f) so that all matters regarding disclosure may be heard and disposed of at the same time.

Finally, the preliminary motions in (c) and (d) are to be heard,

also together. I am persuaded that it is appropriate to group together those two motions, namely, to dismiss the complaint and the counter-motion that the dismissal motion be quashed. The order of submissions on this aspect of the hearing will be: counsel for the respondents on (c); counsel for the Commission on (c) and (d); counsel for the respondents on (c) and (d); counsel for the Commission on (d). This format affords counsel full opportunity to make representations on both motions but in an expeditious format.

While the order in which the preliminary motions will be heard is decided in this interim ruling, it is not possible at this juncture to indicate the date on which any motion will be argued, except to note that the hearing will commence on January 30, 1995. Whether or not more than the motions in (a) and (b) will be disposed of by oral ruling following submissions (or reserved) and/or whether other motions will be heard on that day cannot be determined at this point. Neither is it possible to assess whether the proceedings will have to be adjourned for some of the days set; that will depend, in part, on the outcome of the various preliminary motions and whether the rulings are given orally or the decisions are reserved. However, counsel should attend the hearing on January 30th prepared to argue all preliminary motions, if necessary.

It also appears that, prior to hearing representations with respect to the preliminary motions, it may be necessary to adduce evidence with respect to one or more of the motions. I would urge counsel to co-operate in seeking an agreement (partial or total) on the facts which may be relevant to the various preliminary motions. Absent such agreement, the parties should be prepared to lead their evidence in respect of the preliminary motions in the order in which I have directed the motions be argued. I would further urge counsel to reasonably accommodate one another with respect to the presence of witnesses who may be needed to lead viva voce evidence on the various motions, particularly if counsel are in a position

to estimate the time involved in leading such evidence.

To facilitate the discussions of counsel regarding the extent of the necessity to call viva voce testimony and/or the extent of an agreement on facts relative to the preliminary motions and to facilitate an expeditious hearing of the motions, I hereby direct counsel as follows:

(i) counsel are to prepare a written statement of all of the material facts each intends to prove with respect to the evidence in support of each of the preliminary motions;

(ii) counsel are to exchange their respective written statements by no later than 9:30 a.m. on January 30, 1995;

(iii) counsel are to discuss the extent of any possible agreement on relevant facts and are to report their progress at 10:00 a.m. on January 30, 1995 which is the time scheduled for the commencement of the hearing in this matter; at that time, as well, counsel are to provide me with a copy of their respective statements of material facts;

(iv) if it appears that it would be productive to delay the formal commencement of the hearing to permit further discussion between counsel, that may be requested at 10:00 a.m.

DATED this January 26, 1995.



Susan Tacon

Chair, Board of Inquiry